

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

CV F 02 6311 AWI LJO P

RICHARD MARTINEZ,

Plaintiff,

v.

CHALMERS, et. al.,

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION  
TO AMEND COMPLAINT TO ADD  
DEFENDANT (Doc. 39)

ORDER DEEMING COMPLAINT AMENDED

ORDER FINDINGS SERVICE OF  
COMPLAINT APPROPRIATE AND  
FORWARDING DOCUMENTS TO  
PLAINTIFF

Richard Martinez ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983.

On August 25, 2005, this Court issued a Discovery/Scheduling Order in which the Court set forth a discovery deadline of April 26, 2006, an Amended Pleadings deadline of May 26, 2006, and a dispositive motion deadline of June 26, 2006.

On January 9, 2006, Plaintiff moved to Amend the Complaint. Plaintiff states that through discovery he learned that the identity of the Doe Defendant named in this action was Sandy Tipton, the assistant to Defendant Dr. Chalmers. Plaintiff would like to amend the Complaint to substitute Sandy Tipton for the named Doe Defendant.

1 The Court finds Plaintiff's request is timely in that it was filed prior to the expiration of  
2 the Amended Pleadings deadline of May 26, 2006. As Plaintiff seeks only to amend the  
3 complaint to substitute in Sandy Tipton for the named Doe Defendant, the Court will DEEM the  
4 Complaint AMENDED. Thus, Plaintiff need not resubmit yet another Amended Complaint.

5 In addition, although no dispositive motion was filed by Defendant Chalmers, the Court  
6 will not set the matter for trial until such time as Defendant Tipton has had equal opportunity to  
7 make her appearance and file any relevant motions. Upon the filing of an Answer by Defendant  
8 Tipton, the Court will issue a scheduling order setting forth the deadlines applicable to Defendant  
9 Tipton.

10 Accordingly, the Court HEREBY ORDERS:

- 11 1. The Motion to Amend the Complaint to substitute Sandy Tipton for Defendant  
12 Doe is GRANTED;
- 13 2. The Complaint is DEEMED AMENDED to include Sandy Tipton in place of  
14 Defendant Doe in this action;
- 15 3. The Court finds service appropriate for the following Defendant:  
16 SANDY TIPTON
- 17 4. The Clerk of the Court shall send Plaintiff ONE USM-285 forms, ONE summons,  
18 a Notice of Submission of Documents form, an instruction sheet and a copy of the  
19 complaint filed October 30, 2003 (Doc. 13.)
- 20 5. Within TWENTY (20) DAYS from the date of this Order, Plaintiff shall complete  
21 the attached Notice of Submission of Documents and submit the completed  
22 Notice to the Court with the following documents:
  - 23 a. Completed summons;
  - 24 b. One completed USM-285 form for each defendant listed above; and
  - 25 c. TWO copies of the endorsed complaint filed October 20, 2003.
- 26 6. Plaintiff need not attempt service on Defendant and need not request waiver of  
27 service. Upon receipt of the above-described documents, the court will direct the  
28 United States Marshal to serve the above-named Defendant pursuant to Federal

1 Rule of Civil Procedure 4 without payment of costs.

2 **7. The failure to comply with this Order will result in a Recommendation that**  
3 **this Defendant be dismissed from the action.**

4 IT IS SO ORDERED.

5 **Dated: July 27, 2006**  
6 b9ed48

/s/ Lawrence J. O'Neill  
UNITED STATES MAGISTRATE JUDGE